

REMARKS

The Examiner is thanked for the due consideration given the application.

Upon entry of this amendment, claims 1, 6-15 and 17-23 are pending in the application. By this amendment, claims 2 and 16 are canceled and their subject matter is incorporated into independent claims 1 and 15, respectively.

No new matter is believed to be added to the application by this amendment.

Entry of this amendment under 37 CFR §1.116 is respectfully requested because it cancels claims and places the application in condition for allowance.

Art Rejections

Claims 1, 6, 15 and 17 have been rejected under 35 USC § 102(b) as being anticipated by YALOVENY AGRIC IND (SU 1373398A) as evidenced by NIEUWENHUIZEN et al. (U.S. Publication 2003/0064937) and COOPER et al. (U.S. Patent 6,379,720). Claims 1, 2, 7, 8, 10, 15, 16, 18, and 19 have been rejected under 35 USC § 103(a) as being unpatentable over YALOVENY AGRIC IND in view of NIEUWENHUIZEN et al. and COOPER et al. Claims 1, 2 and 6-23 have been rejected under 35 USC § 103(a) as being unpatentable over WALKER et al. (U.S. Patent 5,474,774), IMAOKA et al. (JP 406179609), BARNEY et al. (U.S. Patent 5,370,863), VAN DEN BERGHE (U.S. Patent 6,284,289), ZOU (CN 1421240), GORENBEIN et al. (U.S. Patent 5,955,102), NIEUWENHUIZEN et al., COOPER et

al. GHOSAL (U.S. Patent 6,224,906) and GIOVANNI et al. (Journal of Natural Products, 65(3):334-8, 2002).

These rejections are respectfully traversed.

Independent claims 1 and 15 have been amended to incorporate the subject matter of claims 2 and 16, which were free of the anticipation rejection over YALOVENY AGRIC IND as evidenced by NIEUWENHUIZEN et al. and COOPER et al. Instant claims 1 and 15 are thus free of this anticipation rejection.

The remaining issues are the unpatentability rejections based on the primary references of YALOVENY AGRIC IND and WALKER et al.

Distinctions of the present invention over the applied art references were set forth in the Amendment filed April 2, 2008. As has been noted, YALOVENY AGRIC IND pertains to non-alcoholic drinks containing grape juice, wine grape seeds, wine-spirit extract of hops, lemon oil, carbon dioxide and water. YALOVENY AGRIC IND fails to disclose compositions for treatment of affections of the oral cavity and upper respiratory tract, such as are set forth in claims 1 and 15 of the present invention. Similarly, WALKER et al. fail to disclose compositions for treatment of affections of the oral cavity and upper respiratory tract, such as are set forth in claims 1 and 15 of the present invention.

YALOVENY AGRIC IND and WALKER et al. thus each fail to be usable as the basis of an assertion of *prima facie* unpatentability.

Further, any unpatentability that could be alleged was fully rebutted by the unexpected results presented in the signed declaration of Ezio Bomabardelli filed May 7, 2008. The unexpected results were summarized by Tables 1 and 2 of the declaration, which are reproduced below.

TABLE 1

	P.I.		Inflammation of pharynx and tonsils	
	Basal Value	After treatment	Basal Value	After treatment
<i>Vaccinium myrtillus</i> extract (A)	4.7	4.0	2.8	1.9
<i>Vitus vinefera</i> extract (B)	4.5	4.1	2.8	2.0
<i>Mirtus Communis</i> extract (C)	4.6	4.2	2.9	2.2
Composition containing B+C	4.6	2.5	2.8	0.7
Composition containing A+B+C	4.7	1.7	2.9	0.1
Placebo	4.6	4.4	2.9	2.8

TABLE 2

	Bacterial count ($\times 10^5$) in gargling samples	
	Basal Value	After treatment
<i>Vaccinium myrtillus</i> extract (A)	20.2	15.2
<i>Vitus vinefera</i> extract (B)	21.4	16.9
<i>Mirtus Communis</i> extract (C)	21.0	17.2
Composition containing B+C	23.2	4.9
Composition containing A+B+C	22.9	2.6
Placebo	23.6	22.4

The advantages of the invention are thus clear, and any *prima facie* unpatentability has thus been fully rebutted.

At page 14 the Official Action asserted that the declaration was insufficient to overcome the rejection over claims 1 and 15 because these claims have been rejected under 35 USC §102(b) over YALOVENY AGRIC IND. However, the instant incorporation of claims has addressed this issue by incorporating into the independent claims subject matter rejected under 35 USC §103(a), which is rebutted by the unexpected results discussed above.

These rejections are believed to be overcome, and withdrawal thereof is respectfully requested.

Conclusion

The rejections are believed to have been overcome, obviated or rendered moot, and that no issues remain. The Examiner is accordingly respectfully requested to place the application in condition for allowance and to issue a Notice of Allowability.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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